

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICKY A. HAND,
Petitioner,

v.

GARY SWARTHOUT,
Respondent.

Case No. [11-cv-06410-WHO](#) (PR)

ORDER STAYING ACTION

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a pro se state prisoner. Petitioner Ricky Hand moves to amend his habeas petition to include an unexhausted claim, and to stay the petition while he exhausts that claim in state court. (Docket No. 35.)

A district court may stay a mixed habeas petition, i.e., a petition containing both exhausted and unexhausted claims, to allow the petitioner to exhaust state court remedies as to those claims that have not yet been presented to the state's highest court. *See Rhines v. Webber*, 544 U.S. 269, 277–78 (2005). In *Rhines*, the Supreme Court discussed the stay-and-abeyance procedure, explaining that a stay and abeyance “is only appropriate when the district court determines there was good cause for the petitioner’s failure to exhaust his claims first in state court,” the claims are not meritless, and there are no intentionally dilatory litigation tactics by the petitioner. *Id.* If the stay is granted, the


petitioner does not have to worry that his newly-exhausted claims will be barred by the statute of limitations because those claims remain pending in federal court. *King v. Ryan*, 564 F.3d 1133, 1139, 1140 (9th Cir. 2009).

Hand's motion to amend the petition to include the unexhausted claim, and his motion to stay the newly-amended petition under *Rhines*, are GRANTED, good cause appearing therefor. Nothing further will take place in this action until the Court decides further action is appropriate, or until Hand exhausts the unexhausted claim and, within thirty days of doing so, moves both to reopen this action and to lift the stay.

For the foregoing reasons, the above-titled action is hereby STAYED until Hand files a motion to reopen as described above. The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of this action, and terminate Docket No. 35. The order to show cause (Docket No. 20) is DISCHARGED.

IT IS SO ORDERED.

Dated: September 17, 2014


WILLIAM H. ORRICK
United States District Judge